Supreme Court, U.S.
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No. 94-971

In the Supreme Court of the United States

October Term, 1994

Eugene and Carol Campbell,

Petitioners

vs.

Leech Lake Band of Chippewa Indians, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT DIANE WHITE'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent Diane White adopts the questions presented by the Petitioners

1. Whether Congress intended that, in considering whether "good cause to the contrary" exists under the Indian Child Welfare Act, 25 U.S.C. §1951(a), to depart from the adoptive preferences of §1915(a), courts are to be limited exclusively to the interpretive regulations of the Bureau of Indian Affairs, or may courts consider such factors as whether adoption outside the preferences would be "in the best interests of the children" or whether extraordinary emotional needs exist for permanence that could only be met by adoption outside the preferences?

2. Whether Congress intended in the Indian Child Welfare Act, 25 U.S.C. §1951(a), that possible permanent foster care with an Indian should be preferred over adoption by a non-Indian family, especially where the best interests of the children favored such adoption, and their extraordinary emotional needs for permanence could only be met through adoption with the non-Indian family?

LIST OF PARTIES

Carol and Eugene Campbell, Petitioners

Leech Lake Band of Chippewa Indians, Respondents

Diane White, Guardian ad Litem, Respondent

Minnesota Department of Human Services, Respondent

Beltrami County Social Services, Respondent

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TABLE OF AUTHORITIES

None

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RESPONDENT DIANE WHITE'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent Diane White respectfully requests that the Court grant the petition of Eugene and Carol Campbell for a writ of certiorari. Petitioners served their petition on November 29, 1994, and counsel for Respondent Diane White received the petition on December 1, 1994. This brief is filed pursuant to Rules 12.4 and 15 of this Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court for which review is sought is reported at 521 N.W.2d 357 (Minn. 1994). Proceedings in the court of appeals are reported at 507 N.W.2d 872 (Minn. Ct. App. 1993), while the decision of the district court is unreported. All three opinions are reproduced in the appendix to the petition.

JURISDICTION

Jurisdiction to consider this petition exists under 28 U.S.C. §1257(a), as the decision below construed the Indian Child Welfare Act, 25 U.S.C. §1901, et seq.

STATUTE INVOLVED

Indian Child Welfare Act, 25 U.S.C. §1915(a) (1988).

§1915. Placement of Indian Children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under state law, a preference shall be given in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which this special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with -

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

STATEMENT OF THE CASE

Respondent Diane White adopts the Statement of the Case of Petitioners.

REASONS FOR GRANTING THE WRIT

Respondent Diane White was appointed by the trial court as guardian ad litem to represent the interests of the three Indian children involved in this appeal. Diane White is an enrolled member of the children's Indian tribe, the Leech Lake Band of Chippewa Indians.

None of the three Indian children testified at trial. Diane White's recommendations as the children's court appointed guardian ad litem is the only voice speaking directly and solely on behalf of the three children. And her voice was not heard or understood by the Minnesota Supreme Court.

After investigating this case for months, after reviewing hundreds of pages of documents and exhibits, and at the very end of the six-day trial in this matter, Diane White testified to her recommendations as the court appointed guardian ad litem on behalf of the three Indian children. Diane White adamantly believes that the best interests of these three particular Indian

believes that the best interests of these three particular Indian children would clearly be best served by a permanent placement with Eugene and Carol Campbell, even though the Campbells are a non-Indian couple. Diane White simply found that in this case, there are a number of solid grounds constituting good cause not to follow the general placement preferences set forth in the Indian Child Welfare Act. The evidence in this case was overwhelming and uncontroverted that these three Indian children have an extraordinary emotional need to remain continuously in one stable home on a permanent basis, that is, until they are eighteen years of age. And the evidence overwhelmingly indicated that there was no suitable Indian home for placement of these three children, even after a diligent search had been made.

For all of these reasons, the children's court appointed guardian ad litem, Diane White, a Native American Indian and an enrolled member of the children's Indian tribe, the Leech Lake Band of Chippewa Indians, adamantly and fully supports the Petition for Writ of Certiorari to the Supreme Court of the State of Minnesota filed by petitioners Eugene and Carol Campbell.

CONCLUSION

The children are being denied the most important thing they need now, a permanent home in a loving and caring family. The court below misread the statute and misconstrued facts to reach a result it wanted, not what the law provided.

There are important reasons for granting the writ. These children are three of them.

Dated: December 19, 1994

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